

SENATE BILL REPORT

SB 6622

As of February 15, 2008

Title: An act relating to providing legal redress for targets of workplace bullying, abuse, and harassment.

Brief Description: Providing legal redress for targets of workplace bullying, abuse, and harassment.

Sponsors: Senators Franklin, Spanel, Keiser, Fairley, McAuliffe, Regala, Shin, Kohl-Welles, and Kline.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 1/22/08.

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Staff: Ingrid Mungia (786-7423)

Background: The Washington Law Against Discrimination (WLAD) establishes that it is a civil right to be free from discrimination based on race; creed; color; national origin; families with children; sex; marital status; sexual orientation; age; the presence of any sensory, mental, or physical disability; or the use of a trained guide dog or service animal by a disabled person. This right applies to employment; places of public resort, accommodation, assemblage, or amusement; commerce; and real estate, credit, and insurance transactions.

There are certain statutory exceptions to the WLAD, some of which include the following: (1) employers with fewer than eight employees and non-profit religious or sectarian organizations are exempt from the employment provisions of the WLAD; (2) any institute that is distinctly private in nature is exempt from the WLAD; and (3) insurance contracts may take into consideration sex, marital status, or the presence of any sensory, mental, or physical handicap when bona fide statistical differences in risk or exposure have been substantiated.

The Washington State Human Rights Commission (Commission) is responsible, in part, for administering and enforcing the WLAD. The Commission receives and investigates complaints made by persons alleging unfair practices in violation of this law. If the Commission finds that there is reasonable cause to believe that discrimination has occurred, it must first try to eliminate the unfair practice via conference and conciliation. If this process fails, the matter will be referred to an administrative law judge, who may, after a hearing on the matter, issue an order providing relief to the complainant.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: It is an unlawful employment practice to subject an employee to an abusive work environment or to retaliate against an employee because he or she has opposed an unlawful employment practice or participated in an investigation or proceeding. An employee may bring a private right of action within one year after the last alleged unlawful employment practice.

An employer is vicariously liable for the unlawful employment practice committed by their employee. An affirmative defense to an action for an abusive work environment includes:

- The employer exercised reasonable care to prevent and promptly correct the abusive conduct and the aggrieved employee unreasonably failed to take advantage of appropriate preventative or corrective opportunities provided by the employer; or
- The complaint is grounded primarily upon a negative employment decision made consistent with an employer's legitimate business interests, based on an employee's poor performance, or the complaint is grounded in an employer's investigation of potentially illegal or unethical activity.

When an unlawful employment practice is committed, a court may enjoin the defendant from engaging in the unlawful practice and may order any other relief that is deemed appropriate. If an employer is found to have committed an unlawful employment practice that did not result in a negative employment decision, the employer's liability for damages for emotional distress may not exceed 25,000 dollars and the employer may not be liable for punitive damages. An employee who believes they have been subject to an unlawful employment practice may choose to accept workers' compensation benefits in lieu of bringing a private right of action.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The emotional stress work place bullying causes is extreme. Over one million people in the state of Washington are affected by work place bullying. This is a pro business bill. There is no legal mandate for employers to act on this bill, no state enforcement or fiscal impact. This bill can be enforced through policy. Protected categories under law are not protected from bullies. Bullying is very serious. Bullying behavior can be extreme. We need to have a good law. Bullying behavior prevents people from getting promotions. This bill takes a step forward. Support the bill, but concerned about what happens after someone is bullied. This bill resonates with both private and public sector. The standard is to show malice. This is about supervisor/worker bullying and employee to employee bullying. This gives people a place to go.

CON: This bill has a tort recovery section and is in conflict with workers' compensation laws. Bigger businesses usually don't have a problem with this bill, it is the smaller employers that are vulnerable. Concerned about compliance with workers' compensation language; it is very broad and vague. There is no incentive not to bring a private right of action. This bill puts small employers in a difficult position. A bullying lawsuit would destroy a small business because of litigation costs.

OTHER: The bill is in conflict with current workers' compensations laws.

Persons Testifying: PRO: Senator Franklin, prime sponsor; Ruth Namie, Martha Woods, Workplace Bullying Institute; Jim Sizemore, Friend of Bullying Institute; David Bowman, stopthebullies@comcast.net; Sean Gallegos, WPEA; Matt Zurich, WFSE; Robby Stern, WSLC.

CON: Kris Tefft, AWB; Vicki Marin, WA Retail Association; Gary Smith, Independent Business Association.

OTHER: Vicki Kennedy, L&I.